

LEGISLATIVE DIGEST

[Health Code - Restrictions on Sale and Use of Electronic Cigarettes]

Ordinance amending the Health Code to prohibit the use of electronic cigarettes where smoking is otherwise prohibited; require a tobacco permit for the sale of electronic cigarettes; prohibit the sale of electronic cigarettes where the sale of tobacco products is otherwise prohibited; and making environmental findings.

Existing Law

The Health Code currently bans smoking in a variety of settings, both enclosed and unenclosed spaces. The Health Department enforces the prohibitions through inspections and a hearing process. The Board of Appeals hears any appeals from enforcement action taken by the Health Department.

The Health Department also permits tobacco retail stores. Tobacco sales are prohibited in certain settings, including pharmacies and stores containing pharmacies.

Amendments to Current Law

The proposed ordinance amends the San Francisco Health Code by adding Article 19N (Sections 19N.1 – 19N.9) to prohibit the use of electronic cigarettes where smoking is otherwise prohibited; require a tobacco permit for the sale of electronic cigarettes; and prohibit the sale of electronic cigarettes where the sale of tobacco products is otherwise prohibited.

Background Information

The FDA has raised concerns that electronic cigarettes, including but not limited to flavored electronic cigarettes, can increase nicotine addiction among young people and may lead youth to try conventional tobacco products. A CDC study showed that in 2011 4.7% of all high schoolers had tried e-cigarettes and that in 2012 that number increased to 10.0% of all high schoolers. Electronic cigarettes may not be legally sold to minors in California. Electronic smoking devices and other unapproved nicotine delivery products have a high appeal to youth due to their high tech design and availability in child-friendly flavors like chocolate and strawberry.

Health authorities have also expressed concerns that the vapors released into the air through the use of an electronic cigarette present a danger to others who breathe them.

The use of an electronic cigarette in public is often indistinguishable from the use of traditional tobacco products, prompting confusion among members of the public wherever smoking is prohibited. Consequently, persons who smoke traditional tobacco products may be induced to do so in areas where smoking is illegal under the mistaken belief that smoking is legal in such areas, or that the ban on smoking in such areas is not being enforced.

Owners of establishments such as office buildings and restaurants encounter similar obstacles seeking to comply with the laws prohibiting smoking in certain locations. An owner may request that a patron stop smoking cigarettes in a restaurant only to have the patron demonstrate that it is an electronic cigarette. The Owner may also be placed in the position of having to confront and examine the cigarettes of any number of customers absent a prohibition on the use of electronic cigarettes where traditional cigarettes are banned.